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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAVID QUESADA,

Petitioner,

## ARTHUR KNOWLES, Acting Warden,

Respondent.

USDC-ND 08-2869 JF

**RESPONDENT'S REQUEST FOR STAY  
PENDING ISSUANCE OF THE  
MANDATE IN *Hayward* OR, IN THE  
ALTERNATIVE, REQUEST FOR AN  
EXTENSION OF TIME;  
[PROPOSED] ORDERS**

Judge:

The Honorable  
Jeremy Fogel

## INTRODUCTION

22 Petitioner filed a Petition for Writ of Habeas Corpus, contending that his due process rights  
23 were violated by the Governor's 2006 decision finding him unsuitable for parole. The Court  
24 ordered a response to the Petition. On May 16, 2008, the Ninth Circuit granted en banc review in  
25 *Hayward v. Marshall*, 527 F.3d 797 (9th Cir. 2008). Oral argument was heard on June 24, 2008.  
26 The en banc court in *Hayward* may decide whether this Court has jurisdiction over this case, and  
27 the appropriate standard to be applied if there is jurisdiction. Therefore, Respondent requests a  
28 stay of this case pending the issuance of the mandate in *Hayward*.

Req. for Stay

*Quesada v. Knowles*  
USDC-ND 08-2869 JF

## ARGUMENT

I.

THE COURT SHOULD EXERCISE ITS DISCRETION AND STAY THIS MATTER PENDING ISSUANCE OF THE MANDATE IN *Hayward* BECAUSE BOTH THE BALANCE OF THE INTERESTS AND CONSIDERATIONS OF JUDICIAL ORDER AND ECONOMY FAVOR GRANTING A STAY.

6 A trial court has discretion to ensure the just and efficient determination of a case by  
7 staying it pending the resolution of other proceedings where a stay would be “efficient for [the  
8 court’s] docket and the fairest course for the parties.” *Leyva v. Certified Grocers of Cal.*,  
9 593 F.2d 857, 863 (9th Cir. 1979). In determining whether to grant a stay, a court should  
10 consider the possible damage that may result, the hardship or inequity that a party may suffer,  
11 and the orderly course of justice, in terms of simplifying or complicating the issues, proof, and  
12 questions of law, that could result from the issuance of a stay. *Lockyer v. Mirant Corp.*, 398 F.3d  
13 1098, 1109, 1111 (9th Cir. 2005). A court should also take into account the existence of similar  
14 cases that are pending in the same district court, and the probability that more are likely to be  
15 filed. *Id.* Staying cases that are on the forefront of an issue provides a necessary delay, allowing  
16 for resolution of the issues and resulting in uniform treatment of like suits. *Id.*

17 As the resolution of *Hayward* could significantly impact this case and numerous similar  
18 cases and issuing a stay would prevent unfairness and serve the interests of judicial economy, the  
19 Court should exercise its discretion and stay this matter pending the issuance of the mandate in  
20 *Hayward*.

**A. Moving Forward with This Case Before the Finality of *Hayward* Does Not Serve the Interest of Judicial Economy.**

23       Granting a stay in this case serves the interests of judicial order and economy. On May  
24 16, 2008, the Ninth Circuit granted rehearing en banc in *Hayward*. (Ex. 1.) At issue before the  
25 en banc panel in *Hayward* are two threshold issues which are necessary to the resolution of this  
26 case: 1) whether California has created a federally protected liberty interest in parole for life  
27 inmates, and 2) if a liberty interest is created, what process is due under clearly established  
28 Supreme Court authority. Resolution of these issues could establish that Petitioner does not have

1 a federally protected liberty interest in parole, potentially allowing the Court to dismiss his  
 2 claims for lack of jurisdiction without requiring briefing from the parties. Moreover, it would be  
 3 wasteful to proceed in this case without the Ninth Circuit's holdings in these matters, as the  
 4 parties would need to brief issues that will be decided *en banc* and then submit supplemental  
 5 briefing to apply the law as clarified in the *en banc* decision. The two rounds of pleadings may  
 6 unnecessarily complicate the matters raised and would impair the orderly course of justice.  
 7 Waiting for the resolution of *Hayward* would thus conserve Court resources, and prevent the  
 8 Court from having to revisit this matter if *Hayward* is modified or reversed.

9 A stay would also serve judicial order and economy by maintaining uniform treatment of  
 10 like suits, as once the law is settled it can be uniformly applied. In many habeas petitions  
 11 challenging California parole decisions, the Ninth Circuit has *sua sponte* stayed submission of  
 12 the cases until the resolution of *Hayward*. *See, e.g., Tolliver v. Carey*, no. 07-15347; *Boatman v.*  
 13 *Brown*, no. 05-16199; *Smiley v. Hernandez*, no. 06-55727; *Valdivia v. Brown*, no. 08-15650;  
 14 *Johnson v. Newland*, no. 04-16712; *Varner v. Brown*, no. 05-16029; *Johnson v. Finn*, no. 06-  
 15 17042; *Clark v. Shepherd*, no. 06-55065; *Cooke v. Solis*, no. 06-15444.

16 Granting a stay would therefore conserve judicial resources and serve the Court's interest  
 17 in orderly managing these proceedings.

18 **B. A Stay Would Not Unfairly Delay Petitioner in Pursuing His Claims.**

19 A stay of this case at the district level would not unfairly impose any additional or  
 20 otherwise avoidable hardship on Petitioner. As discussed above, if the parties proceed in this  
 21 case additional briefing will likely be needed after the decision in *Hayward*, perhaps delaying  
 22 final resolution. Also, even if this court decides this case before *Hayward*, it is likely the losing  
 23 party will file an appeal, and that appeal may be delayed pending resolution of *Hayward*. (*See*  
 24 Arg. I.A.)

25 **CONCLUSION**

26 When the equities are balanced, the parties' interests and the interests of judicial economy  
 27 support staying this case pending the final resolution of *Hayward*. Staying this case until  
 28 challenges to *Hayward* are resolved and that decision becomes final promotes the orderly

1 resolution of this matter, and will assist in maintaining uniformity of like suits pending before  
2 this Court and similar cases that will be filed in the future. Respondent therefore requests that  
3 the Court exercise its discretion to stay this matter pending issuance of the mandate in *Hayward*.  
4 In the alternative and if this request is denied, Respondent respectfully seeks a thirty day  
5 extension of time from the date the Court's denial is served on the Attorney General's Office to  
6 file the Answer.

7 Dated: July 30, 2008

8 Respectfully submitted,

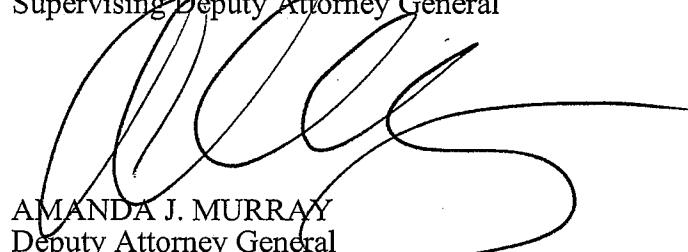
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# **EXHIBIT 1**

**FILED**

**FOR PUBLICATION**

MAY 16 2008

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

RONALD HAYWARD,

No. 06-55392

Petitioner - Appellant,

D.C. No. CV-05-07239-GAF(CT)

v.

ORDER

JOHN MARSHALL, California Men's  
Colony East,

Respondent - Appellee.

**KOZINSKI**, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.